

**REMARKS**

This amendment responds to the Office Action dated September 2, 2009, in which the Examiner rejected claims 1, 28 and 29 under 35 U.S.C. § 112, first paragraph and rejected claims 1, 5, 9, 11 and 26-28 under 35 U.S.C. § 103.

As indicated above, claims 1, 28 and 29 have been amended to comply with the written description requirement. Therefore, Applicant respectfully requests the Examiner withdraws the rejection to claims 1, 28 and 29 under 35 U.S.C. § 112, first paragraph.

Claims 1, 5, 9, 11 and 26-29 were rejected under 35 U.S.C. § 103 as being unpatentable over *Kobayashi* (U.S. Patent No. 7,149,408) in view of *Nakata, et al.* (U.S. Publication No. 2203/0091329).

Applicant respectfully traverses the Examiner's rejection of the claims under 35 U.S.C. § 103. The claims have been reviewed in light of the Office Action, and for reasons which will be set forth below, Applicant respectfully requests the Examiner withdraws the rejection to the claims and allows the claims to issue.

A certified translation of the priority document in order to perfect Applicants priority date of November 15, 2002, will be filed shortly.

Applicant respectfully points out that the present application and *Nakata, et al.* are commonly assigned to Sony Corporation. As set forth in 35 U.S.C. § 103 (c) (1):

"Subject matter developed by another person, which qualifies as prior art only under one or more of the subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the

same person or subject to an obligation of assignment to the same person".

In the present application, *Nakata, et al.* constitute prior art only under 35 U.S.C. § 102 (e). Applicant respectfully submits that the present application and *Nakata, et al.* were, at the time the present invention was made, owned by Sony Corporation. Accordingly, *Nakata, et al.* is disqualified from being used in a rejection under 35 U.S.C. § 103 against the present invention. Therefore, Applicant respectfully requests the Examiner withdraws the rejection to claims 1, 5, 9, 11 and 26-29 under 35 U.S.C. § 103.

Thus, it now appears that the application is in condition for a reconsideration and allowance. Reconsideration and allowance at an early date are respectfully requested.

**CONCLUSION**

If for any reason the Examiner feels that the application is not now in condition for allowance, the Examiner is requested to contact, by telephone, the Applicant's undersigned attorney at the indicated telephone number to arrange for an interview to expedite the disposition of this case.

In the event that this paper is not timely filed within the currently set shortened statutory period, Applicant respectfully petitions for an appropriate extension of time. The fees for such extension of time may be charged to Deposit Account No. 50-0320.

In the event that any additional fees are due with this paper, please charge to our Deposit Account No. 50-0320.

Respectfully submitted,

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By



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